

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

VERISIGN, INC.,

Plaintiff,

v.

XYZ.COM, LLC

-and-

DANIEL NEGARI,

Defendants.

**Case No. 1:14-cv-01749-CMH-
MSN**

**PLAINTIFF'S MOTION TO COMPEL
PRODUCTION OF DEFENDANTS' FINANCIAL DOCUMENTS HELD
BY THEIR ACCOUNTANT AND INCORPORATED MEMORANDUM IN SUPPORT**

Plaintiff VeriSign, Inc. ("Verisign"), by and through undersigned counsel, moves to compel Defendants to produce financial documents in the possession of their account, Elias Aziz-Lavi, respectfully stating as follows:

1. On July 24, 2015, the Court ordered XYZ to "produce all relevant documents" sought in requests for production 28-30 (ECF 167).
2. The requests were: "all audited and unaudited financial statements" (28); "documents sufficient to show quarterly and annual gross revenue, gross profit, net profit, costs, expenses, and actual and projected sales related to the XYZ Promotion" (29); and "documents sufficient to show whether payments from Web.com and/or Network Solutions . . . are reported as revenue on XYZ's books, records, and financial statements" (30). ECF 138-1.

3. Instead of fully complying with the Court's order, Defendants produced some information when due, but have not produced documents in the possession of their accountant, Elias Aziz-Lavi, CPA. Defendants have actually interfered with Plaintiff's subpoena to Elias Aziz-Lavi, requiring unnecessary motions practice in California, and continue to press the same legal arguments in the Central District of California that they lost in this Court. Notably, it is the same lawyers who are counsel to Defendants in this case who are urging the Central District of California to reach a contrary result. *See Weigand Decl.* ¶¶ 3-7.

4. There is no excuse for Defendants' obstruction. Rule 34 requires them to produce responsive documents within their "control." Fed. R. Civ. P. 34(a)(1). Accountant documents are within Defendants' control. *See Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 153-54 (S.D.N.Y. 1997) ("Financial records of the defendant in the possession of defendants' accountant are documents which defendant has the legal right to obtain") (quoting *Wardrip v. Hart*, 934 F. Supp. 1282, 1286 (D. Kan. 1996); *see also Winston v. Alhadeff*, 1986 WL 4437, at *2 (N.D. Ill. Apr. 7, 1986) ("Documents of a client given to an accountant are within the custody and control of the client since he has a right to demand their return.")).

5. Plaintiff seeks an order compelling Defendants XYZ and Negari to produce all responsive documents within the custody of their accountant, including all communications between the accountant and Defendants relating to the financial statements.

CONCLUSION

WHEREFORE, Verisign respectfully requests that this motion be granted and Verisign be awarded the costs of this Motion.

LOCAL RULE 37 CERTIFICATE

Plaintiff's counsel states that the parties conferred about financial documents extensively prior to filing the motion subject to the Court's original order (ECF 167), and have conferred in several phone calls and emails, as provided in the Declaration of Kevin Weigand, in an effort to avoid this motion. Unfortunately, Defendants would not agree to produce the documents.

Dated: August 7, 2015

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 2015, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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